

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

PHILLIP EDWARDS, JR.,)	
)	
Plaintiff,)	
)	
v.)	CV417-072
)	
STATE OF GEORGIA; WAL-MART)	
HWY 17, INC.,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Proceeding *pro se* and *in forma pauperis*, Phillip Edwards, Jr., brings this 42 U.S.C. § 1983 action against the State of Georgia and “Wal-Mart Hwy 17, Inc.” Doc. 1. The Court is screening his prisoner Complaint under 28 U.S.C. § 1915A.¹

¹ Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-71, to establish procedures to govern civil complaints filed in federal court by prisoners and other detainees. Among the PLRA’s procedures is the requirement for this Court to conduct an early screening in all civil cases of any complaint in which a prisoner seeks redress from a government entity or official. *See* 28 U.S.C. § 1915A. The purpose of the early screening is to “identify cognizable claims” in the prisoner’s complaint and to dismiss any claims that: (1) are frivolous; (2) are malicious; (3) fail to state a claim upon which relief can be granted; or (4) seek monetary relief from a defendant immune from such relief. *Id.* Similarly, 42 U.S.C. § 1997e(c)(2) allows the Court, under the same four standards for dismissal listed in § 1915A, to dismiss any prisoner suit brought “with respect to prison conditions.” Therefore, the Court examines Plaintiff’s Complaint to determine whether he has stated a claim for relief under 42 U.S.C. § 1983.

I. BACKGROUND²

Edwards is confined at Chatham County Detention Center. Doc. 1 at 1. He alleges that he is being prosecuted for shoplifting despite his actual innocence (his female companion shoplifted while he waited in the car, having forgotten his wallet at home). *Id.* at 7-8. He claims he is falsely accused and his character slandered, and that the State is knowingly continuing the prosecution despite a Wal-Mart employee's clear testimony that he is innocent. *Id.* at 8 (at his preliminary hearing, the Wal-Mart representative testified that she had observed him enter and exit the store (in person or on camera, it isn't clear), and that she believed he "wasn't involved in any shoplifting acts/crime"; the judge denied bond anyway and sent the case on to superior court).

II. ANALYSIS

Liberally construed, plaintiff's cause of action rests on a theory of malicious prosecution rather than "false accusation." The Eleventh Circuit "has identified malicious prosecution as a violation of the Fourth

² Because the Court applies Fed. R. Civ. P. 12(b)(6) standards in screening a complaint pursuant to § 1915A, *Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1278-79 (11th Cir. 2001), allegations in the complaint are taken as true and construed in the light most favorable to the plaintiff, *Bumpus v. Watts*, 448 F. App'x 3, 4 n.1 (11th Cir. 2011). Conclusory allegations, however, fail. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (discussing a Rule 12(b)(6) dismissal).

Amendment and a viable constitutional tort cognizable under § 1983.” *Wood v. Kesler*, 323 F.3d 872, 881 (11th Cir. 2003). But an essential element of a malicious prosecution claim is the termination of the criminal prosecution in the plaintiff’s favor. *Id.* at 882. And here there is no allegation that the Chatham County criminal case, CR-16-2055, was resolved in his favor. *See* doc. 1 at 7-8. Indeed, at the time he filed his complaint Edwards’ state criminal case was and apparently is still pending. *See* attached (case status “pending,” with a jury trial set to begin the week of August 7, 2017). He therefore cannot bring suit challenging the wrongful issuance of legal process (his arrest warrant) unless and until that prosecution is terminated in his favor or his conviction is overturned.³ His malicious prosecution claims should be

³ In the event that such state court criminal proceeding has been finalized into a conviction, Edwards would now be complaining of defects that necessarily imply its invalidation. In that case, § 1983 affords him no remedy: “[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement. . . . He must seek federal habeas corpus relief (or appropriate state relief) instead.” *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (quotes and cites omitted); *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (“[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983.”). And before he can bring a federal habeas action, he must first exhaust his available state remedies through either a direct appeal or a petition for collateral relief. *Wilkinson*, 544 U.S. at 79 (federal “habeas corpus actions require a petitioner fully to exhaust state remedies, which § 1983 does not”); 28 U.S.C. §§ 2254(b), (c).

DISMISSED.⁴

Finally, the Constitution does not forbid slander. *Paul v. Davis*, 424 U.S. 693 (1976) (an interest in reputation alone is not a liberty or property interest protected by the due process clause); *Williams v. City of Savannah*, 2015 WL 994259, at *3 (S.D. Ga. Nov. 12, 2015) (defamation and slander claims are not actionable under § 1983). Therefore, defamation of plaintiff's character -- even if falsely accused of theft -- does not give rise to a claim under 42 U.S.C. § 1983 and his claim that defendants slandered him must also be **DISMISSED**.

Though a *pro se* prisoner normally should be given an opportunity to amend his complaint at least once, *see, e.g., Johnson v. Boyd*, 568 F. App'x 719, 724 (11th Cir. 2014); *Duff v. Steub*, 378 F. App'x 868, 872

⁴ Moreover, the "State of Georgia" -- presumably the prosecutors who are pursuing the conviction and the judges handling the case (first at the preliminary hearing and then at trial) -- is immune from suit. *See* doc. 1 at 7-8. The State itself enjoys Eleventh Amendment immunity. Its judges are entitled to absolute immunity for all actions taken in their judicial capacity, except where they take action in a "clear absence of all jurisdiction." *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quotes omitted). And absolute judicial immunity "applies even when [a] judge's acts are in error, malicious, or were in excess of his or her jurisdiction." *Id.* Similarly, its prosecutors are entitled to absolute immunity from damages for their acts or omissions taken in the course of initiating a prosecution. *Id.* at 1242; *see also Imbler v. Pachtman*, 424 U.S. 409, 409 (1976) ("[I]n initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983."); *Jackson v. Capraun*, 534 F. App'x 854, 859 (11th Cir. 2013) (prosecutor entitled to absolute immunity for initiating prosecution *even if* he did so with malicious intent).

(11th Cir. 2010), “a district court need not allow amendment if the amended complaint would still be subject to dismissal.” *Jenkins v. Walker*, 620 F. App’x 709, 711 (11th Cir. 2015). Plaintiff’s malicious prosecution claim is dead on arrival, and does not appear amendable.⁵

III. CONCLUSION

Accordingly, Phillip Edwards, Jr.’s Complaint should be **DISMISSED without prejudice**. Meanwhile, it is time for plaintiff to pay his filing fee. His PLRA paperwork reflects \$63.18 in average monthly deposits. Docs. 4 & 9. He therefore owes a \$12.64 initial partial filing fee. *See* 28 U.S.C. § 1915(b) (1) (requiring an initial fee assessment “when funds exist,” under a specific 20 percent formula). Plaintiff’s custodian (or designee) shall remit the \$12.64 and shall set aside 20 percent of all future deposits to his account, then forward those funds to the Clerk each time the set aside amount reaches \$10.00, until the balance of the Court’s \$350.00 filing fee has been paid in full.

Also, the Clerk is **DIRECTED** to send this Report and

⁵ Despite the lack of any apparent basis for viable amendment, plaintiff’s opportunity to object to this Report and Recommendation within 14 days of service, see *infra*, affords him an opportunity to resuscitate his case. He may also submit an Amended Complaint during that period, if he believes it would cure the legal defects discussed above. *See Willis v. Darden*, 2012 WL 170163 at * 2 n.3 (S.D. Ga. Jan. 19, 2012) (citing *Smith v. Stanley*, 2011 WL 1114503 at * 1 (W.D. Mich. Jan. 19, 2011)).

Recommendation (R&R) to plaintiff's account custodian immediately, as this payment directive is nondispositive within the meaning of Fed. R. Civ. P. 72(a), so no Rule 72(b) adoption is required. In the event he is transferred to another institution, his present custodian shall forward a copy of this R&R and all financial information concerning payment of the filing fee and costs in this case to plaintiff's new custodian. The balance due from plaintiff shall be collected by the custodian at his next institution in accordance with the terms of the payment directive portion of this Order.

This R&R is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 72.3. Within 14 days of service, any party may file written objections to this R&R with the Court and serve a copy on all parties. The document should be captioned "Objections to Magistrate Judge's Report and Recommendations." Any request for additional time to file objections should be filed with the Clerk for consideration by the assigned district judge.

After the objections period has ended, the Clerk shall submit this R&R together with any objections to the assigned district judge. The

district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to timely file objections will result in the waiver of rights on appeal. 11th Cir. R. 3-1; see *Symonett v. V.A. Leasing Corp.*, 648 F. App'x 787, 790 (11th Cir. 2016); *Mitchell v. U.S.*, 612 F. App'x 542, 545 (11th Cir. 2015).

SO REPORTED AND RECOMMENDED, this 19th day of July, 2017.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA



CHATHAM COUNTY, GA

Eastern Judicial Circuit of Georgia

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July 13, 2017

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Case Details

State
VS.
EDWARDS, PHILLIP

- [Case Events](#)
- [Charges](#)
- [Parties](#)
- [Proceedings](#)

Case Information

Court: Superior
Case Number: CR162055
Case Type: THEFT-F
Judge: HONORABLE JOHN MORSE
Assistant District Attorney: CRYSTAL D HARMON
Date Filed: 11/8/2016
Status: ACTIVE -
Next Event: 8/7/2017 JURY TRIAL

Defendant Information

Name: EDWARDS, PHILLIP
DIN: P0511424
Gender: MALE
Race: AFRICAN AMERICAN
Height: 72
Weight: 195
Eyes: BROWN
Hair: BLACK

Attorney Information

ROBERT PERSSE
 PUBLIC DEFENDER'S OFFICE
 SAVANNAH, GA
 31401

Bondsman Information

N/A

Case Events

Date	Time	Code	Judge	Action
8/7/2017	10:00AM	JURY TRIAL	JOHN MORSE	
6/12/2017	2:00PM	MOTION HEARING (MTH)	JOHN MORSE	
6/12/2017	11:00AM	STATUS CONFERENCE HEARING	JOHN MORSE	
2/2/2017	11:00AM	ARRAIGNMENT/CALENDAR CALL	JOHN MORSE	

[\[Return to Top\]](#)

Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
16-8-14	THEFT BY SHOPLIFTING	1	FELONY	7/26/2016 9:05:05 PM	

[\[Return to Top\]](#)

Proceedings

8/7/2017	10:00AM	JURY TRIAL		JOHN MORSE	
7/7/2017		MEMORANDUM			PRO SE/
6/14/2017		ORDER			ORDER ON DEF'S MOTION IN LIMINE REGARDING STATUS OF NON-TESTIFYING CODEFENDANTS/
6/12/2017	2:00PM	MOTION HEARING (MTH)		JOHN MORSE	
6/12/2017	11:00AM	STATUS CONFERENCE HEARING		JOHN MORSE	
4/28/2017		MOTION - IN LIMINE	GRANTED		MOTION IN LIMINE REGARDING STATUS OF NON-

					TESTIFYING CODEFENDANTS/
4/19/2017		STATE'S DISCOVERY DISCLOSURE			
4/14/2017		STATE'S DISCOVERY DISCLOSURE			STATE'S DEMAND FOR DISCOVERY PURSUANT TO OCGA SECTION 17-16-1, ET SEQ./STATE'S RESPONSE TO MOTIN FOR DISCOVERY FILED UNDER AUTHORITY OF OCGA 17-16-1, ET SEQ./STATE'S DEMAND THAT ANY AND ALL MOTIONS TO SUPPRESS BE PARTICULARIZED/LIST OF WITNESSES/
4/14/2017		STATE'S DISCOVERY DISCLOSURE			STATE'S DEMAND FOR DISCOVERY PURSUANT TO OCGA SECTION 17-16-1 ET SEQ./STATE'S RESPONSE TO MOTION FOR DISCOVERY FILED UNDR AUTHORITY OF OCGA 17-6-1, ET SEQ./STATE'S DEMAND THAT ANY AND ALL MOTION TO SUPPRESS BE PARTICULARIZED/LIST OF WITNESSES
4/12/2017		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			MOTION REQUESTING FREE COPY OF PRELIMINARY HEARING TRANSCRIPT/
4/12/2017		PRO SE LETTER RECEIVED			PLEA IN BAR/
4/12/2017		PRO SE LETTER RECEIVED			MEMORANDUM/
3/16/2017		PRO SE LETTER RECEIVED			
2/2/2017		PRETRIAL CONF SCHED ORDER			
2/2/2017	11:00AM	ARRAIGNMENT/CALENDAR CALL		JOHN MORSE	
11/15/2016		MOTION - RESERVING RIGHT TO FILE ADDITIONAL MOTIONS			CERT OF SVC/
11/15/2016		DEFENDANTS ELECTION TO PROCEED UNDER OCGA 17-16-1			
11/15/2016		ORDER			ORDER FOR APPLICATION FOR BOND, GRANTED \$7000.00/
11/9/2016 12:26:35 PM		SCN			INITIAL CASE SCREENING / SCANNING
11/8/2016		ACCUSATION FILED - ENTERED			

[\[Return to Top\]](#)

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